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SUMMARY RECORD OF THE 1418th MEETING*

Held at the Palais des Nations, Geneva,
on Tuesday, 11 July 1995, at 10 a.m.

Chairman: Mr. AGUILAR URBINA

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Fourth periodic report of Ukraine

* No summary record was issued for the 1417th meeting.

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4)

Fourth periodic report of Ukraine (CCPR/C/95/Add.2)

1. At the invitation of the Chairman, Mr. Krukov, Mr. Shamshur and Mr. Semashko (Ukraine) took places at the Committee table.

2. Mr. KRUKOV (Ukraine) said that the purpose of the fourth periodic report (CCPR/C/95/Add.2) and of the delegation's impending dialogue with the Committee was not to present the situation in Ukraine in the best possible light but to communicate his country's firm conviction that it had irrevocably embarked on a course of civilized development. Although significant progress had been made in the area of human rights, there were still many problems to be addressed. However, the positive trends were a source of joy to all Ukrainians and augured well for the future. The current meeting with the Committee was to be viewed as a form of support for Ukraine's human rights endeavours. His delegation's role was not to defend its report but to engage in a constructive and mutually beneficial dialogue with the Committee.

3. The fourth periodic report had been submitted in May 1994 and in the intervening period major changes had occurred in Ukraine's economic and legislative situation. A new President, Mr. Leonid Kuchma, had been elected in July 1994 and the new Supreme Council of Ukraine had commenced its activities at around the same time. Economic and political reform had been given new impetus. Legislation had been introduced to protect vulnerable groups and to tackle corruption and economic crime. The ongoing conflict between the President and the Supreme Council had been resolved with the conclusion of a Constitutional Agreement and the adoption of the Act on State Authority and Local Self-Government in Ukraine. The President headed the new vertical system of executive authority and the parliamentary and legislative role of the Supreme Council had been strengthened.

4. Steps had been taken to enhance public awareness of legal matters and of human rights in particular. A general educational programme incorporating human rights material was being prepared and would shortly be implemented in schools. It would include material on individual articles of the Covenant.

5. In line with article 6 of the Convention, Ukraine had adopted the Act on the Accession of Ukraine to the Treaty on the Non-Proliferation of Nuclear Weapons on 16 November 1994. Earlier, a trilateral agreement had been signed between the United States, Ukraine and the Russian Federation under which Ukraine had undertaken to transfer to the Russian Federation the nuclear weapons remaining on Ukrainian territory after the breakup of the Soviet Union.

6. One of the first decrees of the new President had been the Decree on Urgent Measures to Combat Crime. Under the Act on Temporary Detention, which had been enforced for a year and then repealed since it had served its

purpose, the prosecutor's permission and the provision of convincing evidence by the chief investigator were required for preventive detention. Legislation had also been introduced to combat illegal trafficking in and abuse of drugs, psychotropic substances and precursors.

7. The CHAIRMAN invited the Ukrainian delegation to respond to the questions in section I of the list of issues, which read:

"I. Constitutional and legal framework within which the Covenant is implemented; state of emergency; non-discrimination and equality of the sexes; and rights of persons belonging to minorities (arts. 2, 3, 4, 26 and 27)

(a) Please clarify the legal and practical consequences of the dissolution of the Soviet Union and Ukraine's birth as an independent State on the procedure for the implementation in that country of the rights set forth in the Covenant and their enjoyment by individuals. Please provide information on factors and difficulties affecting the implementation of the Covenant in so far as political, economic and religious matters are concerned.

(b) What measures have been taken to disseminate information on the rights recognized in the Covenant and on the first Optional Protocol (see para. 21 of the report)? To what extent has the public been made aware of the examination of the fourth periodic report by the Committee?

(c) Please indicate whether, during the period under review, there were any cases in which the provisions of the Covenant were directly invoked before any State organs, including the courts, mentioned in judicial decisions, or applied in precedence of a conflicting provision of domestic law.

(d) What are the procedures for the implementation of any views adopted by the Human Rights Committee under the Optional Protocol?

(e) Please clarify the present status of the draft Constitution and clarify what are the foreseen functions and responsibilities of the Supreme Council plenipotentiary for human rights (ombudsman) referred to in paragraph 23 of the report?

(f) Please provide detailed information on the State of Emergency Act of June 1992 and indicate, in particular, what safeguards and remedies would be available to individuals during a state of emergency as well as steps taken to ensure conformity with article 4, paragraph 2, of the Covenant (see para. 43 of the report).

(g) What steps have been taken to tackle the difficulties referred to in paragraph 219 of the report which may be conducive to 'certain acts of discrimination on ethnic, property, religious, linguistic or gender groups'?

(h) In view of the difficulties mentioned in paragraph 42 of the report, please clarify what concrete measures have been taken to enhance and reinforce the status of women. Please provide current data concerning the number and proportion of women in political, economic, social and cultural life in the country.

(i) Have any measures been taken regarding separatist tendencies in a number of regions, particularly Crimea? If so, what has been the impact of such measures on the exercise of the rights guaranteed under the Covenant (see paras. 30, 37 and 227 of the report)?

(j) What results have been obtained in implementing measures referred to in paragraph 227 of the report designed to ensure the return to Crimea and the resettlement there of the Crimean Tatars?

(k) Has the adoption of the Ukrainian Act on National Minorities and the Declaration of the Rights of the Nationalities of Ukraine led to any measurable progress to date (see paras. 220 to 229 of the report)?"

8. Mr. KRUKOV (Ukraine), replying to question (a), said that the legal and practical consequences of the dissolution of the Soviet Union had been enormous and their scale was as yet only imperfectly understood. Ukraine had been able to assume responsibility for its own fate. However, the process of democratization or perestroika had actually started in 1985, prior to the breakup of the Soviet Union, and it was difficult to attribute particular achievements relating to the enjoyment of human rights to the period of independence alone.

9. Turning to question (b), he said that the fourth periodic report had been published in full, unlike its predecessors which had been consigned to closed archives. The former President of Ukraine, Mr. Kravchuk, had published a compilation of international human rights instruments, including the Covenant and the first Optional Protocol, to which Ukraine was a party. Another series of publications issued by an Ukrainian-American human rights protection office, of which he himself was one of the founders, dealt with particular aspects of respect for human rights in both theoretical and practical terms.

10. There were plans to disseminate information on the current dialogue with the Committee and on the Committee's conclusions and recommendations in the mass media, including the Government press.

11. With regard to question (c), there had been no cases in which the provisions of the Covenant had been directly invoked before the courts. Nevertheless, a law currently in force stipulated that international treaties ratified by Ukraine were part of Ukrainian legislation. If judicial or other authorities found that existing domestic legislation was inadequate, they could refer to the provisions of those treaties.

12. In response to question (d), he said that although no communications had yet been received regarding Ukraine, he had consulted the Ministry of Foreign Affairs on the procedure to be followed for implementing any views adopted by the Committee under the Optional Protocol. There was currently no established procedure, but if a citizen was dissatisfied with the ruling of a legal

authority in Ukraine, an appropriate procedure would certainly be devised for implementation of the Committee's views on the case. The experience of other countries would be consulted for the purpose.

13. Turning to question (e), he said that the drafting of a new constitution had been a lengthy process for purely objective reasons. A constitution drafted for a country undergoing radical change was liable to become obsolete within a short period. On the other hand, a constitution drafted for an ideal society would have prevented Ukrainian society from operating effectively under current circumstances. As a compromise, it was argued that an interim constitution establishing the basic structures of State authority would allow fundamental changes to take place in the political, economic and sociocultural fields pending the adoption of a stable long-term constitution. The Constitutional Agreement and the Act on State Authority and Local Self-Government were playing the role of an interim constitution and would remain in force for a year. There was a clear-cut division between the powers of parliament and those of the President. A draft constitution was currently being prepared and had gone through a number of versions. His personal opinion was that it would not be adopted in the near future and that the delay might be welcome inasmuch as it would allow time to draft a solid and durable constitution for a much more stable society.

14. With regard to the plenipotentiary for human rights (ombudsman), all draft constitutional texts provided for such an office but without specifying the functions and responsibilities of the incumbent. The activities of the ombudsman would be governed by special legislation. The Ukrainian-American human rights protection office and other bodies were currently drafting such legislation. Ukraine would be consulting Poland and the Russian Federation, which already had some experience with the institution of the ombudsman, not all of it positive. The office would probably be established concurrently with the adoption of the Constitution.

15. Turning to paragraph (f), he said that the most prominent features of the State of Emergency Act of June 1992 were a definition of a state of emergency for the purposes of the interim constitutional arrangements, and of the conditions under which it could be enforced, together with an account of the only permissible restrictions of Freedoms and derogations from obligations under the Covenant during such situations. The provisions of the Act demonstrated that central to the State's concerns was the swiftest possible return to normality. No circumstances had as yet occurred to justify the application of the Act.

16. Paragraph (g) raised a number of important issues relating to protection against discrimination. He would deal with matters of discrimination on religious or gender grounds under later headings. Discrimination on linguistic grounds posed somewhat less of a problem than in the past, but nevertheless persisted and remained a matter of some considerable concern; he pointed out that as many as 100 different national groups were represented in the country. After recalling the circumstances under which, during the Soviet period, a law had been passed declaring Ukrainian to be the sole State language, he said that, with independence, the authorities had been made aware of considerable resistance to that radical provision, interpreted in some circles as an act of political expediency and a capitulation to excessively

minorities and setting out the procedures and conditions under which those constituencies would operate. The provisions of that law had had a good effect in recent elections to local and republican bodies in Crimea in ensuring representation of the various national minorities.

25. Turning to question (k), he said there were no grounds for concern regarding the guarantee and observance of the rights of the nationalities of Ukraine, but in his view there was a certain contradiction between the provisions of article 27 of the Covenant and those of article 26, the former obliging States parties to afford a degree of preferential treatment to national minorities and the latter asserting equality before the law irrespective of national origin. A legal basis was needed for the extension of preferential treatment to national minorities, and that legal basis should perhaps be in the Covenant itself. One right which should be on an equal footing with the right to citizenship was the right to national self-identification, which would provide the basis for continued preferential treatment to guarantee national rights. A new passport was being issued for citizens of Ukraine, but because of the negative effects it had had under the previous, Soviet regime, there was now no entry on the passport where the citizen could state his or her nationality. That was wrong because it removed the legal basis for being given preferential treatment. The statement of nationality on a passport should not be mandatory, but people should have the right to choose their nationality and to state it, as well as the right not to do so. If that right had been included in the Covenant, Ukraine would have implemented it with regard to its new passport.

26. The CHAIRMAN invited the members of the Committee who so wished to put additional questions in the light of the replies by the representative of Ukraine to section I of the list of issues.

27. Mr. BÁN said that, because of the enormous changes Ukraine had undergone in recent years, the country's fourth periodic report should really be regarded as an initial report in a new situation; the Committee should approach it in that light. The report was a very good one - informative, open and frank; neither the report nor Mr. Krukov had sought to conceal the difficulties impeding compliance by Ukraine with the obligations laid down in the Covenant. In his view, a central problem was that Ukraine had an outmoded Constitution which in many places differed surprisingly from the wording and spirit of the Covenant, and was often in contradiction with it. The Ukrainian Constitution of 1978 had been substantially amended, and he would like to know more about that process. Article 57 of the Constitution stated that the citizens' exercise of their rights and freedoms was inseparable from the performance of their duties and obligations; that was in complete contradiction with the Covenant. In many places, the Constitution made political and civil rights dependent on the objective of building communism, and while he imagined that those parts of the Constitution had been changed, it was still in many respects surprisingly outmoded. He found the relationship between the Constitution, the Covenant and individual legislation a frustrating one, and he wondered what techniques and procedures were used to determine priorities when contradictions existed between the three bodies of law. There were rights in the Covenant that did not exist in the Constitution, and he would like to know more about the procedures available for citizens to compel the authorities to implement the provisions of the

Covenant. He wondered whether, since regaining State sovereignty, the authorities in Ukraine had examined their international treaty obligations under the Covenant in order to see in which respects they could enhance compliance. It was well known that there had been many serious violations of human rights under the previous regime in Ukraine, and there was an obligation under the Covenant to identify and if necessary punish the perpetrators and to compensate the victims. Information had been given regarding compensation of Crimean Tatars, but he wondered what plans there were to punish past violations of human rights and to compensate victims more generally. With regard to discrimination and minority issues, general comment 18 indicated that the principle of equality sometimes required States parties to take affirmative action in order to diminish or eliminate conditions which caused or helped to perpetuate discrimination prohibited by the Covenant. He wondered what plans Ukraine had to remedy such situations and, in particular, whether it had any particular problem with the gypsy minority. It had been good to learn that Crimean Tatars and other national minorities had the right to quotas in elections, but in that respect he wondered if there was not concern regarding possible discrimination; what were the criteria for singling out those minorities for better treatment than others? Noting that paragraph 224 of the report spoke of the right to free employment of the native language of all peoples and national groups in all spheres of public life, he asked whether that freedom applied to court proceedings and communications with local authorities.

28. Mr. MAVROMMATIS said the report showed that Ukraine was irrevocably committed to the path to democratization, although he regretted the absence of a core report which would have set out the evolution of events in a systematic manner. Regarding paragraphs 9 to 11, which concerned restoration of the recognition of private property, he wondered whether there was any difference between the treatment of those who had stayed behind and been deprived of their property and those who had been forced by the previous regime to live abroad and been deprived of their property; was there any time-limit for applying for their property to be returned? He also wondered how the Covenant ranked vis-à-vis old and existing laws, and which would prevail in the event of a conflict. He regretted that the report had not been made available in advance to lawyers' associations and academics, as their observations would have been helpful, but that failure had to some extent been offset by the decision to make public the results of the consideration of the report by the Committee. As for communications under the Optional Protocol, he wondered if enabling legislation was already in place that would be brought into play in the event of the Committee directing the release of a detainee or ordering compensation. He would be grateful for information regarding the methods by which the authorities in Ukraine ensured that minorities were represented at local and republic level, and he asked if seats were exclusively reserved for and allocated to them. Finally, he said that general comments 18 and 23 would have provided answers to some of Ukraine's queries.

29. Mr. PRADO VALLEJO said the Ukraine report was a sincere and objective one which clearly set out the difficulties and did not seek to hide anything. There had been a number of legislative measures, notably ratification of the Optional Protocol, which had led to a substantial improvement in the human rights situation in Ukraine. However, there remained some concerns, notably with regard to violations of human rights committed under the previous regime.

He wondered if the specific mass violations highlighted by the Committee in the past had been investigated and if any measures had been taken with regard to them.

30. Paragraph 17 of the report stated that the principle of the separation of powers had "not by a long way been given full effect"; if there were no effective separation of powers, what happened with regard to the judiciary, which had to be independent? He requested further details regarding what measures would be taken to ensure that the Ukrainian judiciary was fully independent, and what guarantee there was of the independence of judges when they were appointed.

31. Paragraph 19 referred to unsolved problems arising from the economic reforms having had a negative effect on the level of protection, observance and guarantee of fulfilment of citizens' rights and liberties. He wished to know how the enjoyment of civil and political rights had been affected by the "muddle and inconsistency" in the economic transformations in Ukraine referred to in paragraph 18 of the report.

32. Paragraph 21 of the report rightly pointed out that the status of human rights in any society depended upon education and culture. But it also indicated that the Ukrainian people were not seeking remedies. What measures and programmes were being undertaken by Ukraine to ensure that the rights of individuals were protected? Were there, for instance, human rights professorships in the universities? If citizens were unable to seek remedies on their own behalf, it was incumbent upon the State to provide protection. Furthermore, paragraph 23 indicated that the efforts of the State to provide protection against human rights abuses were inadequate. What measures were being taken to redress that situation?

33. The economic reforms under way in Ukraine had a more severe effect on women than on men: 90 per cent of the unemployed were women. What actions were being taken to resolve the economic discrimination against women? Furthermore, domestic violence against women continued unabated. What was being done to guarantee the rights of women?

34. Finally, extremist and chauvinist movements were on the rise, and in fact an anti-Semitic campaign had been launched. What measures were being taken to combat that distressing phenomenon?

35. Mrs. CHANET said that the timely submission of the Ukraine report testified to that country's commitment to cooperating with the work of the Committee. Although the report could be commended for making no effort to disguise the facts, it placed too much stress on the obstacles to change rather than discussing ways and means of removing them. The delegation's oral introduction had indicated beyond a doubt that important advances had been made: the transition towards a democratic and pluralistic society was well under way.

36. Although the Ukrainian delegation had provided very complete answers to the list of issues prepared by the Committee, there remained a number of inconsistencies, many of them attributable to the complexity of the transitional period. She was particularly concerned about the future of the

draft new constitution, which had been described as compromised as well as precarious. That document provided for the protections guaranteed by the Covenant in a much clearer and more detailed manner than did the current Constitution. But what would occur if the draft new constitution foundered? Ukraine's current Constitution had been rigorously amended in 1992 with regard to fundamental freedoms. But those amendments were of a general nature, and the application of such basic freedoms as freedom of the press, freedom of expression and freedom of association fell within the purview of the domestic legislation, which could be altered from one day to the next. At issue was the relative value of those laws within the legislative hierarchy. Paragraph 112 of the report, in fact, indicated that although the Constitutional Court - which could function as a firm guarantor of the rights of citizens - had been established in 1992, there were serious obstacles to its functioning; the lack of a new constitution must certainly be among them. Since the separation of powers was so difficult to achieve that the issue had virtually created a political crisis in Ukraine, she was concerned that the failure to adopt the draft new constitution might severely compromise Ukraine's ability to fulfil its obligations under the Covenant. Furthermore, she would appreciate further clarification on the nature of the Act on the Status of Judges.

37. Further questions arose with regard to remedies. Ukraine had indicated that its accession to the Optional Protocol was virtually certain. Yet the Optional Protocol required the exhaustion of domestic remedies before international solutions could be sought. The report made no mention of such domestic remedies. What redress was available to Ukrainians?

38. Finally, what was the State of Emergency Act and under what circumstances could it be invoked? Which authorities were competent to declare such a state of emergency? It would also be useful to know what measures it envisaged, and if they were devised to be proportionate to the prevailing state of affairs. What rights to derogation existed under that Act? Did those rights reflect the terms of article 4 of the Covenant?

39. Mr. LALLAH said that he regretted the absence of a core document, which could have shed light on the implementation of article 2 in Ukraine. Neither he nor Mrs. Chanet had found the Constitution to reflect the provisions of that article; in what legislation did they figure? Paragraph 7 of the report referred optimistically to the enhancement of the judiciary and the separation of powers; but in the light of paragraphs 17, 19, and 23, what in fact had been achieved? The tenor of the report was by and large too vague and generalized; if the State was weak, for example, it would be useful to know in what ways it was weak.

40. Turning to the paragraphs of the report that addressed article 14, he said that it would be useful to know precisely how the judicial system was organized. Mrs. Chanet had drawn paragraph 112 of the report to the attention of the Committee: if judges had indeed not been elected to the Constitutional Court since its establishment as long ago as 1992, by what means were constitutional problems resolved?

41. In his view, the report placed too much stress on the responsibility of the State and on the enforcement of the principles of human rights. The Covenant spoke of the rights of individuals; the State's obligation was to ensure that the individual whose rights were violated should have a remedy. What in fact could a person do in such a case; to whom could he turn? The report failed utterly to address the matter of an individual's right to redress.

42. Since the Ukraine report had been prepared in 1994, presumably its drafters had been unable to read the Committee's general comment on article 27. The report revealed much confusion with regard to the intent of that article. The discussion of the Crimean Tatars was viewed as a question of minority rights, for example. But it should rather be viewed in terms of the right of an individual to return to his country. Similarly, the problem of preferential treatment for the allocation of political seats was not a problem of article 27 but of article 25, coupled with the anti-discrimination provisions of article 2, paragraph 1, and article 26. Nor did he understand the discussion of citizenship and nationality. Did an inhabitant of Ukraine have to belong to a particular nationality in order to benefit from article 27, which related to religious, cultural and linguistic rights? There was undoubtedly discrimination in Ukraine; that problem should be addressed in relation to each and every article of the Covenant.

43. Mr. BUERGENTHAL said that he shared the view of Mr. Bán: under the circumstances, the current report should in all fairness be viewed as the initial report. It was a pleasure for him to review the report of the new and independent State of Ukraine, a development he had never expected to see in his lifetime. The report's candour was refreshing; furthermore, Ukraine's recent strides in the legislative sphere were undoubtedly impressive. But like other Committee members, he found the report weak in its description of practical measures. Laws had evidently been enacted, but there was no description of enforcement measures. Paragraph 21 of the report stated, for instance, that the implementation of the principles of human rights depended upon education and culture, but it failed to discuss measures taken by the Government in that domain. Had efforts been undertaken to revise school texts so as, for example, to remove stereotypes conducive to discriminatory practices? Had the Ministry of Education considered establishing a committee, whose membership would include representatives of minorities, to review textbooks?

44. Furthermore, it would be helpful to know if, for example, Ukraine had a human rights commission, or if the Ministries of Foreign Affairs and Justice had human rights divisions. If so, what was their bureaucratic rank?

45. It would also be useful to know if the State of Emergency Act took into account Ukraine's obligations under the Covenant. When a state of emergency was declared, was an individual entitled to invoke the Covenant on his behalf, or were those guarantees abolished?

46. Lastly, paragraph 36 asserted that the State's reaction to manifestations of extremism could not always be considered commensurate with the danger they represented. Was that meant to suggest that the State reacted too mildly or too severely?

47. Mr. BRUNO CELLI said that he was gratified to consider the report of a newly democratic State. Whether or not the inhabitants of a country were informed of their rights under the Covenant was a question of great interest to the Committee. For when a State party ratified an international human rights instrument, it undertook obligations not so much towards the international community as towards its inhabitants, and if those inhabitants were unaware of those obligations, the Covenant often proved ineffectual. The status of that awareness was generally measured by the frequency with which the Covenant was invoked before a governmental body, including, of course, the courts. He too had been struck by paragraph 21, which suggested that Ukraine had not yet achieved the level of culture and education necessary for the successful fulfilment of its obligations under the Covenant. But Ukraine was a literate society, and the dissemination of information should therefore not pose great difficulties. If the people of that country were unaware of their rights under the Covenant, the necessary efforts had not been made. A detailed, comprehensive reply to questions (b) and (c) of section I of the list of issues was therefore of great interest.

48. Like other members of the Committee, he was concerned by the State of Emergency Act. Did that Act in fact fully conform to the provisions of the Covenant? In particular, did it conform to the terms of article 4, paragraph 2, which cited those articles from which no derogations could be made? Furthermore, the report stated that public opinion was opposed to the abolition of the death penalty. It might be preferable if, rather than acting on the basis of public opinion when that position ran counter to the principles of human rights, a State instead undertook to enlighten the views of its inhabitants in the matter.

49. Mr. EL SHAFEI said that Mr. Bán had been right to point out that the report under consideration was virtually if not nominally the initial report of Ukraine. That report, as well as the oral replies of the delegation to the list of issues formulated by the Committee, seemed to offer a genuine and comprehensive vision of the actual state of affairs in that country. Importantly, it had emphasized the responsibility of the political leadership in establishing institutional and juridical conditions conducive to the fullest possible enjoyment of human rights. It also recognized that the observance of the principles of human rights was largely commensurate with a country's cultural and educational level. But how much had the Ukraine authorities actually done to inform the population of the newly independent State of their rights? The delegation had indicated that a variety of journals and books addressed that problem. In its view, was that sufficient? Ukraine should consider the development of training and educational programmes to inform citizens of their rights and to urge them to claim them; the dissemination of such information was the responsibility of the State party.

50. There remained a significant discrepancy between international and domestic human rights standards. Article 2, paragraph 2, of the Covenant discussed the State party's obligation to undertake a review of existing legislation and to endeavour to bring its legislation into line with the provisions of that instrument. Admittedly, upon its ratification of the Covenant, Ukraine could not have undertaken that process; but it was now in a position to do so.

51. Furthermore, no State party should deem there to exist a relationship between the enjoyment of civil and political rights and the success of economic reforms. The enjoyment of those rights must not be seen to depend on the degree of economic development achieved in a country; similarly, the economic situation must never be used as a justification for delaying the enforcement of such rights.

52. It would be useful to know what mechanism existed in Ukraine for responding to the Committee's views on communications. The oral replies of the delegation had suggested that that responsibility was left to the judiciary; it should more properly be the domain of the executive branch. Furthermore, by what procedure would Ukraine address the conclusions drawn by the Committee from its consideration of the current report?

53. Finally, he did not think there was a discrepancy between articles 2, 26 and 27 in relation to the problem of minorities; those articles should be read as complementary, although that topic of course called for a more extensive discussion.

The meeting rose at 1.05 p.m.